



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2004

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2004-0018

Dear Mr. Mann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193714.

The City of Garland Police Department (the "department") received a request for a specified offense report. You state that the department has released some of the responsive information. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the requested information includes an arrest warrant and arrest warrant affidavit. These documents are governed by article 15.26 of the Code of Criminal Procedure. The 78th Legislature recently amended article 15.26 to add language providing:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Act of May 31, 2003, 78th Leg., R.S., ch. 390, § 1, 2003 Tex. Sess. Laws Serv. 1631 (to be codified as an amendment to Crim. Proc. Code art. 15.26). In this instance, the submitted information includes an executed arrest warrant as well as an affidavit for arrest presented

to a magistrate in support of the warrant. Article 15.26 of the Code of Criminal Procedure makes these documents public. As a general rule, the exceptions found in chapter 552 of the Government Code do not apply to information that is made public by other statutes. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, an unredacted copy of the arrest warrant and arrest warrant affidavit must be released to the requestor.

We now address your claims under section 552.108 of the Government Code. Section 552.108 provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with the detection, investigation or prosecution of crime. *See* Gov't Code §§ 552.108(a)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Generally, an explanation that the information relates to a pending criminal investigation establishes that release would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.-Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978).

In this instance, you state that the "disposition of this incident is still pending." Based upon your representation that the information at issue was collected by the department in connection with the investigation of the alleged offense and that the disposition of this incident is still pending, we conclude that the requested information pertains to a pending criminal investigation. Therefore, we find that section 552.108(a)(1) is applicable to the information and the department may withhold the information you have highlighted in yellow. Because section 552.108 is dispositive, we do not address your other arguments for this information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by other statutes. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any

provision of law enacted on or after October 1, 1990. *See id.* The department states that the submitted social security number, which you have marked in green, is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 because it was obtained and is maintained as a part of the investigation records. This is not an appropriate reason for withholding the social security number under the federal law. Because the department does not provide any laws that allow it to obtain or maintain the social security number, the department must release the social security number. Furthermore, we note that an arrestee's social security number is basic information under section 552.108(c) of the Government Code. *See* Open Records Decision No. 127 (1976).

Lastly, we address your claim under section 552.130 of the Government Code. This section excepts from public disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). Section 552.130(a)(1) is applicable to information that relates to a Texas driver's license. The department must withhold the Texas drivers license number we have marked pursuant to section 552.130.

In summary: (1) you must release the entire arrest warrant and affidavit for the arrest warrant under article 15.26 of the Code of Criminal Procedure; (2) the information you have highlighted in yellow may be excepted from disclosure under section 552.108(a)(1); and (3) the Texas driver's license number we have marked is excepted from disclosure under section 552.130. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 193714

Enc. Submitted documents

c: Mr. Joseph M. Varaghese
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Euleless, Texas 76039
(w/o enclosures)